

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9097 of 1992

Date of decision: 20-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL NARSINHBHAI MULCHANDDAS

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner
Ms. Siddhi Talati for Respondent No. 1
Mr. Nagesh Sud for Respondent No. 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

It is not in dispute that respondent No.2 - a registered public trust - was running the institution of which respondent No.3 is the principal. The institution is receiving 100 per cent grant in aid from the Government of Gujarat. The petitioner was appointed as senior clerk in respondent institution after selection. His services came to be terminated under order annexure-D dated 2-12-1992. Hence the present special civil application before this Court.

2. On 23rd September, 1992 rule was issued and interim relief against termination of services of petitioner was granted. The parties are not at issue that the aforesaid interim relief is continued till date. It is the case of the respondents that the services of the petitioner have been terminated as the strength of the students in the institution was reduced. The counsel for the respondents further stated that for all these years the petitioner has been paid salary though there is no work for him in the institution.

3. The learned counsel for the petitioner, challenging the validity of the order of termination of services of the petitioner, made three fold contentions. First contention has been raised that the petitioner was a permanent employee of respondents No.2 and 3 and before terminating his services the provisions as contained in Article 311 of the Constitution of India were to be complied with, which has not been done, and as such the order is void ab initio. It has next been contended that prior to termination of services of the petitioner respondents No.2 and 3 have not taken approval from the Director of Employment and Training, Government of Gujarat. Last contention is raised that in other institutions the posts of senior clerk are vacant and as such the petitioner should have been absorbed therein.

4. On the other hand the learned counsel for respondents contended that provisions of Article 311 of the Constitution of India are not attracted in the present case as the petitioner is not holding any civil post. In reply to the second contention the learned counsel for the respondents submitted that a general

order has been issued by the Director that where there is any shortfall in the requisite number of students in any trade, then services of the employees to the extent it is surplus should be terminated. In view of this fact permission of the Director for terminating the services of the petitioner was not required to be taken. So far as the last contention is concerned, the counsel for the respondents contended that the other institutions, even if there is vacancy available, may or may not accept the petitioner, and the respondent State is not in a position to compel that institution to absorb the petitioner.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I do not consider it necessary to decide the first two contentions raised by the learned counsel for the petitioner in this special civil application, as I consider that the third contention raised by the learned counsel for the petitioner deserves acceptance.

6. It is not in dispute that the petitioner worked for all these years in respondent No.3 - institution, and he was appointed on the post of Senior Clerk after he has been selected in the open selection. It is also not in dispute that private I.T.Is. are getting 100 per cent grant in aid from the Government. The counsel for the petitioner submits that the petitioner is willing to go anywhere where he is absorbed in another institution. In view of these facts it is certainly within the competence of the respondent -State in a situation where a person became surplus in one institution because of shortfall of requisite number of students in the training course to absorb that employee in other institutions where vacancy is there. The institution has no say in the matter as it is receiving 100% grant in aid from the Government. The Government has all the prerogative to send an employee who has been declared surplus from one institution to another institution which is receiving grant-in-aid. In view of these facts I consider it to be proper to dispose of this special civil application with the direction to the respondent State that the case of petitioner for absorption on the post of Senior Clerk in another institution where post is lying vacant shall be considered within a period of three months from the date of receipt of copy of this order, and appropriate order be passed. In case the petitioner cannot be absorbed in another institution, the respondent No.1 shall pass reasoned order and copy of the same maybe sent to the petitioner by registered post A.D. In that case liberty is granted to the petitioner for revival of this special civil application. Till the matter of absorption of the

petitioner in another institution is decided, the interim relief granted by this Court shall continue. Subject to the aforesaid direction, petition and rule stand disposed of. No order as to costs.

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